AGS Harta Sdn Bhd v Liew Yok Yin

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-02–475 OF 2006
RAUS SHARIF, SULONG MATJERAIE AND MOHD HISHAMUDIN JJCA
1 OCTOBER 2009

Land Law — Indefeasibility of title and interests — Forged transfer — Whether signatures on sale and purchase agreement, transfer form and valuation form were forgeries — Whether defendant proven that it was bona fide purchaser for value — Whether proviso to s 340(3) of the National Land Code applicable — National Land Code s 340

AGS Harta Sdn Bhd, the defendant entered into a sale and purchase agreement ('the SPA') with one Liew Yok Yin ('the vendor') for the purchase of a plot of agricultural land situated in Johor Bahru ('the land') at a purchase price of RM500,000. A Form14A was used to effect the transfer of the land. When the plaintiff, whose name was similar to the name of the vendor and who was the actual registered proprietor of the land, discovered that the title of the land had been acquired by the defendant she lodged a police report. Thereafter when she learned that the land was duly registered under the defendant's name she instituted the present suit whereby she sought to have the land restored to her as the registered proprietor. The basis of the plaintiff's claim was that she had not at any time executed any instrument of transfer in the defendant's favour and that she had at all times retained a copy of the original document of title in respect of the land. As such she contended that the registration of the title into the defendant's name was wrong, illegal and void as the registration had been obtained by forgery. In its defence the defendant denied the existence of forgery on the instrument of transfer and pleaded that even if forgery existed it was a bona fide purchaser for value since it had already paid the full purchase price of RM500,000 and the relevant stamp duties and registration fees. As such the defendant contended that it had acquired an indefeasible title under s 340 of the National Land Code ('the Code'). The trial judge found as a fact that the plaintiff did not execute the SPA, transfer form and the valuation form. This aspect of his finding was not only based on the plaintiff's evidence but also on the evidence of the defendant's solicitor who had testified that the person by the name of Liew Yok Yin from whom he prepared the sale documentations and who executed the same was not the plaintiff. The trial judge also found that although the defendant had given valuable consideration it had failed to discharge the

burden that it was a bona fide purchaser in good faith. This was the defendant's appeal against that decision. In its appeal the defendant submitted that the trial judge had insufficient evidence to conclude that the signatures on the SPA and valuation forms were forgeries as no handwriting expert was called to verify the authenticity of the plaintiff's signatures on those documents. The defendant also submitted that the trial judge had erred in finding that the defendant was not a bona fide purchaser for value of the land.

Held, dismissing the appeal with costs:

(1) There was no necessity to call a handwriting expert as there was more than sufficient evidence to support the trial judge's findings that the plaintiff had never at any time executed the SPA and valuation forms for the disposal of the land. If the plaintiff had not signed the documents in question it stood to reason that someone else had forged her signature on those documents. Further, this fact was also confirmed by the defendant's solicitor who testified that the plaintiff had not executed the said documents. As such the defendant's contention that the trial judge had insufficient evidence to conclude that the signatures on the said documents were forgeries was devoid of any merit (see para 17).

(2) The trial judge's finding that the defendant was not a bona fide purchaser for value to avail itself of the proviso to s 340(3) of the Code was a finding of fact. As there was no error in the reasons given by the trial judge as to this finding of fact there was no cause for this finding to be reversed (see para 19).

(3) The trial judge had properly appreciated the evidence adduced in this case (see para 20).

[Bahasa Malaysia summary

AGS Harta Sdn Bhd, defendan tersebut memasuki suatu perjanjian jual beli ('PJB tersebut') dengan Liew Yok Yin ('penjual') untuk pembelian sebidang tanah pertanian yang terletak di Johor Bahru ('tanah tersebut') pada harga belian RM500,000. Satu Borang 14A telah digunakan untuk melaksanakan pemindahan tanah tersebut. Apabila plaintif, yang mempunyai nama yang serupa dengan nama penjual dan merupakan pemilik berdaftar yang sebenar bagi tanah tersebut, mendapati bahawa geran tanah tersebut telah diperolehi oleh defendan dia telah membuat laporan polis. Selepas itu apabila dia mendapati bahawa tanah tersebut telah didaftarkan di bawah nama defendan dia memulakan guaman ini di mana dia memohon untuk pengembalian tanah tersebut kepadanya sebagai pemilik berdaftar. Asas tuntutan plaintif

adalah bahawa dia tidak pernah pada bila-bila masa melaksanakan apa-apa suratcara pindahan yang berpihak kepada defendan dan bahawa dia telah menyimpan salinan asal geran tanah tersebut pada setiap masa. Oleh itu dia menegaskan bahawa pendaftaran milikan kepada nama defendan adalah salah, haram dan tidak sah kerana pendaftaran itu telah diperolehi secara pemalsuan. Dalam pembelaannya defendan menafikan kewujudan pemalsuan di atas instrumen pemindahan (instrument of transfer) itu dan memplidkan bahawa walaupun pemalsuan tersebut wujud ia adalah seorang pembeli bona fide untuk nilai memandangkan ia telah membayar harga belian yang penuh sebanyak RM500,000 dan duti-duti setem berkaitan dan yuran pendaftaran. Oleh itu defendan menyatakan yang ia telah memperoleh hakmilik yang tidak boleh disangkal di bawah s 340 daripada Kanun Tanah Negara ('Kanun tersebut'). Hakim bicara telah mendapati sebagai satu hakikat bahawa plaintif tidak melaksanakan PJB tersebut, borang pemindahan dan borang penilaian. Aspek penemuannya bukan sahaja berdasarkan keterangan plaintif tetapi juga pada keterangan peguamcara defendan yang telah memberikan testimoni bahawa orang yang bernama Liew Yok Yin yang menyediakan dokumen-dokumen jualan dan yang melaksanakan jualan tersebut bukanlah plaintif. Hakim bicara juga mendapati bahawa walaupun defendan telah memberi balasan berharga ia telah gagal untuk melaksanakan beban bahawa ia adalah seorang pembeli bona fide dengan niat baik. Ini adalah rayuan defendan terhadap keputusan itu. Dalam rayuannya defendan menghujahkan bahawa hakim bicara tidak mempunyai bukti yang mencukupi bagi membuat kesimpulan bahawa tandatangan-tandatangan pada PJB tersebut dan borang-borang penilaian adalah palsu kerana tiada pakar bagi tulisan tangan dipanggil untuk mengesahkan ketulenan tandatangan-tandatangan plaintif pada dokumen-dokumen itu. Defendan juga menghujahkan bahawa hakim bicara telah khilaf dalam memutuskan bahawa defendan bukan seorang pembeli bona fide untuk nilai bagi tanah tersebut.

Diputuskan, menolak rayuan dengan kos:

(1) Tidak ada keperluan untuk memanggil seorang pakar tulisan tangan kerana terdapat bukti yang lebih daripada mencukupi untuk menyokong pendapat hakim bicara bahawa plaintif tidak pernah pada bila-bila masa melaksanakan PJB tersebut dan borang penilaian untuk pelupusan tanah tersebut. Jika plaintif tidak menandatangani dokumen-dokumen yang dipertikaikan maka ia bermaksud yang seseorang lain telah memalsukan tandatangannya pada dokumen-dokumen itu. Selanjutnya, fakta ini juga disahkan oleh peguam cara defendan yang memberikan testimoni bahawa plaintif tidak melaksanakan dokumen-dokumen tersebut. Oleh itu pengataan defendan yang hakim bicara tidak mempunyai bukti yang mencukupi

bagi membuat kesimpulan bahawa tandatangan-tandatangan atas dokumen-dokumen tersebut adalah pemalsuan tidak mempunyai merit (lihat perenggan 17).

(2) Pendapat hakim bicara bahawa defendan bukan seorang pembeli bona fide untuk nilai bagi defendan menggunakan proviso pada s 340(3) Kanun tersebut adalah satu penemuan fakta. Oleh kerana tidak ada kesilapan dalam alasan-alasan yang diberikan oleh hakim perbicaraan berkenaan dengan penemuan fakta ini maka tidak ada sebab untuk penemuan ini dimansuhkan (lihat perenggan 19).

(3) Hakim bicara telah dengan betulnya mengaplikasi bukti-bukti yang dikemukakan dalam kes ini (lihat perenggan 20).]

Notes

For cases on forged transfer, see 8 *Mallal's Digest* (4th Ed, 2006 Reissue) paras 2923–2928.

Cases referred to

Adorna Properties Sdn Bhd v Boonsom Boonyanit @ Sun Yok Eng [2001] 1 MLJ 241, FC (folld)

Au Meng Nam v Ung Yak Chew & Ors [2007] 5 MLJ 136, CA (refd)

Subramaniam a/l NS Dhurai v Sandrakasan a/l Retnasamy & Ors [2005] 6 MLJ 120, CA (refd)

Legislation referred to

National Land Code s 340, 340(2)(b), (3), Form 14A

Appeal from: Suit No 22–436 of 2002(1) (High Court, Johor Bahru)

Harpal Singh (AK Sharma with him) (AK Sharma) for the appellant.
Bernard George (Tay, Bernard & Cheong) for the respondent.

Raus Sharif JCA (delivering judgment of the court):

[1] This is an appeal by the defendant against the decision of the learned High Court judge at Johor Bahru in allowing the plaintiff's claims against the defendant in respect of Johor Bahru, High Court Suit No 22–436 of 2002(1).

[2] We heard the appeal on 28 July 2009 and unanimously dismissed it with costs. We now give our reasons.

[3] The brief facts leading to this appeal are these. On 26 January 1999, the defendant executed a sale and purchase agreement with a lady named Liew Yok Yin of No 128, Jalan Padi Mahsuri, Taman Senai Baru, 81400 Senai

('vendor') for the purchase of an agricultural land measuring 7A 3R 27P held under GM 210 Lot 1184 Mukim Senai-Kulai, Daerah Johor Bahru ('the said land') at a purchase price of RM500,000. The vendor was represented by Messrs Loh & Renga, Johor Bahru in the sale of the said land.

[4] The said land was registered in the defendant's name on 25 January 2000 by the Pentadbir Tanah Daerah Johor Bahru. Form 14A dated 2 November 1999 was used to effect the transfer.

[5] The plaintiff's name is also Liew Yok Yin, similar to the name of the vendor. However, her identity card number and address differ from that of the vendor's. The identity card number and the address as stated in the sale and purchase agreement and Form 14A are not of the plaintiff's.

[6] On 3 August 2001, the plaintiff was informed by her son, Chia Chee Chiong, of clearance works on the said land. The plaintiff lodged a police report upon being shown by the defendant a copy of the title of the said land duly registered under the defendant's name.

[7] Thereafter, the plaintiff instituted this present suit seeking for various declaratory relief. Basically, the plaintiff was seeking to have the said land restored to her as the registered proprietor.

[8] The basis of plaintiff's claim was that she did not at any time execute any instrument of transfer in the defendant's favour and that the original issue document of title has all along been in her possession and she had never parted with it. She contended that the registration of the title into the defendant's name was wrong, illegal and void as the registration has been obtained by forgery.

[9] The defendant in their defence denied the existence of forgery on the instrument of transfer and pleaded that even if forgery exists they were bona fide purchaser for value having paid the full purchase price of RM500,000 and the relevant stamp duties and registration fees. By reason thereof, they have acquired an indefeasible title under s 340 of the National Land Code.

[10] Section 340 of the National Land Code provides as follows:

(1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or

easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.

(2) The title or interest of any such person or body shall not be indefeasible —

(a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in subsection (2) —

(a) it shall be liable to set aside in the hands of any person or body to whom it may subsequently be transferred; and

(b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:

Provided that nothing in this subsection shall effect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such purchaser.

(4) Nothing in this section shall prejudice or prevent —

(a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any written law for the time being in force, or any power of avoidance by any such law; or

(b) the determination of any title by operation of law.

[11] The Federal Court in *Adorna Properties Sdn Bhd v Boonsom Boonyanit @ Sun Yok Eng* [2001] 1 MLJ 241 set out the workings of s 340 of the National Land Code. What had happened in that case was this. A rogue had forged Ms Boonsom Boonyanit's signature and sold the transferred two pieces of land belonging to her to the Adorna Properties whom then became the registered proprietor. Ms Boonsom Boonyanit brought action against Adorna Properties to have the lands registered back to her as the registered proprietor. She failed in the High Court but succeeded in the Court of Appeal. Adorna Properties appealed to the Federal Court. The Federal Court reversed the Court of Appeal decision and upheld the High Court decision.

[12] In effect, the Federal Court in construing s 340 held that even if the instrument of transfer was forged, a purchaser in good faith and for valuable consideration nevertheless obtained an indefeasible title to the land. The court said in the following words:

> The proviso to sub-s (3) of s 340 of the NLC deals with only one class or category of registered proprietors for the time being. It exclude from the main provision of sub-s (3) this category of registered proprietors are not caught by the main provisions of this subsection. Who are these proprietors? The proviso says that any purchaser in good faith and for valuable consideration or any person or body claiming through or under him are excluded from the application of the substantive provision of sub-s (3). For these category of registered proprietors, they obtained immediately indefeasibility notwithstanding that they acquired their titles under forged documents.

[13] The decision of the Federal Court has no doubt placed registered owners of landed properties in jeopardy. The effect of that decision is that land owners may, one morning, find themselves no longer owning their landed properties without any fault or knowledge on their part. Thus, it is not surprising that the decision had been heavily criticised. To some, the Federal Court's decision was plainly wrong and should be disregarded (see *Subramaniam a/l NS Dhurai v Sandrakasan a/l Retnasamy & Ors* [2005] 6 MLJ 120, *Au Meng Nam v Ung Yak Chew & Ors* [2007] 5 MLJ 136 and an article *Demise of Deferred Indefeasibility under the Malaysian Torrens System* by Associate Professor Teo Keang Soo, Faculty of Law, National University of Singapore [2002] Singapore Journal of Legal Studies 403–408.

[14] Despite the criticisms, the Federal Court decision, being the decision of the apex court, remains a binding authority. We believe the learned trial judge had the Federal Court decision in mind when he decided the present case. The learned trial judge after considering the evidence adduced by the respective witnesses of the plaintiff and the defendant held that:

(a) the sale documentation was a forgery and hence the defeasibility provision of s 340(2)(b) of the National Land Code applies;

(b) the defendant are not bona fide purchaser for value so as to avail themselves of protection of the proviso to s 340(3).

[15] The contentions of the defendant before us are these. First, there was insufficient evidence for the learned trial judge to conclude that the signatures on the sale and purchase agreement, Form 14A and valuation forms were not of the plaintiff but were in fact forgeries. Second, the learned trial judge was wrong in finding that the defendant was not a bona fide purchaser for value of the said land.

FORGERY

[16] The learned trial judge found that on the cumulative effect of the evidence adduced in this case the sale documentations comprising of the sale and purchase agreement, the transfer forms and valuation forms did not bear the signature of the plaintiff. Hence, the signature appearing thereon not being the signature of the plaintiff cannot be sufficient instrument to convey title to the defendant. He found it as a fact that the plaintiff did not execute the sale and purchase agreement, the transfer form and valuation form. This aspect of his finding was not only based on the evidence of the plaintiff herself which the learned judge accepted as a witness of truth, but also on the evidence of the defendant's witness, Mr Loh Song Chuan (SD2) who had testified that the person by the name of Liew Yok Yin from whom he prepared the sale documentations and who executed the same was not the plaintiff.

[17] We are in agreement with the learned judge's finding. We are unable to accept the defendant's submission that a handwriting expert must be called in order to verify the authenticity of the plaintiff's signatures on those documents. We are of the view that there is no necessity to call the handwriting expert. This is because there are more than sufficient evidence to support the learned trial judge's findings that the plaintiff had never at any time executed the sale and purchase agreement, the transfer form and the valuation forms for the disposal of the said land. If she had not done so, someone else must have done it. Common sense tells us that someone else must have forged her signatures on those documents. This fact was even confirmed by the defendant's own witness ie SD2, who testified that it was not the plaintiff who executed the sale documentations of the said land. Hence, the defendant's submission on this issue is devoid of any merit.

BONA FIDE PURCHASER

[18] The learned trial judge found that on the balance of probabilities the defendant had failed to discharge the burden that they were purchaser in good faith for value. He gave his reasons as follows:

> Evidence adduced establishes that the circumstances in conducting the sale without any proper investigation into the title or the person claiming to be owners of the property and the unexplained completion effected five months after the completion date in contravention of the express terms of time being the essence clearly negatives the bona fides of the defendant.
>
> The evidence of SD1 clearly establishes that he never met the vendor personally as all dealings was done through the clerk to Messrs Abdul Haris and the solicitor

A therein who represented him. There is no supportive evidence adduced that there was investigation into the title to the said property and there does not appear to be any valuation done.

In this connection it is also pertinent to allude to the evidence of SD2 Loh Song Chuan the solicitors for the vendor. Upon scruntinising his evidence, regretfully I
B have to say that it does not inspire confidence. In his own evidence he is a seasoned lawyer of 20 years practice but the manner in which he involved himself in the transaction leaves much to be desired — this is particularly telling in the manner in which he did not prepare the CKHT forms nor retained any gains tax amount when the agreement he prepared specifically provided for the provision of retaining
C property gains tax and more so when scrutiny of the title presented by the vendor would reveal that she acquired the title in 1997 which is about two years back from the sale and hence would invariably attract real property gains.

Again his attempt to adduce evidence that the defendant was not involved in fraud is questionable when he was never at any time representing the defendant.

D The conduct aforesaid leads me to conclude that the evidence of SD2 cannot be supportive of the bona fide of the defendant.

Now aside from the evidence of SD1 that the defendant is a bona fide purchaser for value there is no other supporting evidence as regards his bona fides. There is
E no evidence from defendant and/or defendant's lawyer who represented the defendant that he ensured that an amount to cover the real property gains tax payable was retained by the vendor's solicitors bearing in mind that the vendor's solicitors was contractually obligated to retain such part of the balance of the purchase price for such purpose.

F In the absence of any supporting evidence I cannot conclude that the defendant is a bona fide purchaser even though valuable consideration had been given.

[19] From the above, the learned trial judge had clearly assessed the evidence of the defendant's witnesses but concluded that the defendant was
G not a bona fide purchaser for value to avail themselves of the proviso to s 340(3) of the National Land Code. The finding of the learned trial judge that the defendant was not a bona fide purchaser was finding of fact. It is most unusual for an appellate court to reverse a trial judge's finding on facts, unless good reasons are shown to us. We see none. In fact, the learned trial
H judge had given his reasons as to why the defendant was not a bona fide purchaser for value and we could not find any fault or error in the reasons given by him. Thus, we affirmed the learned trial judge's finding that the defendant was not a bona fide purchaser for value.

I **[20]** In conclusion, we are satisfied that the learned trial judge had properly appreciated the evidence adduced in this case. Accordingly, we dismissed the appeal. After hearing the parties on costs we fixed costs at RM10,000 to be paid by the defendant to the plaintiff. The deposit for the appeal was ordered to be paid to the plaintiff towards account of fixed costs.

Appeal dismissed with costs.

Reported by Kohila Nesan